

# SENATE BILL 749

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3lr2496

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By: **Senator Folden**

Introduced and read first time: February 6, 2023

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Crimes – Interception of Wire, Oral, or Electronic Communications – Exception**  
3 **for Imminent Danger and Admission as Evidence**

4 FOR the purpose of authorizing a person to intercept a wire, oral, or electronic  
5 communication when the person reasonably believes that the person is in imminent  
6 danger of becoming the victim of a certain crime; establishing that a wire, oral, or  
7 electronic communication intercepted as authorized under this Act may be offered as  
8 evidence under certain circumstances and subject to certain notice requirements;  
9 and generally relating to interception of wire, oral, or electronic communications.

10 BY repealing and reenacting, without amendments,  
11 Article – Courts and Judicial Proceedings  
12 Section 10–402(a) and (b)  
13 Annotated Code of Maryland  
14 (2020 Replacement Volume and 2022 Supplement)

15 BY adding to  
16 Article – Courts and Judicial Proceedings  
17 Section 10–402(c)(12)  
18 Annotated Code of Maryland  
19 (2020 Replacement Volume and 2022 Supplement)

20 BY repealing and reenacting, with amendments,  
21 Article – Courts and Judicial Proceedings  
22 Section 10–405  
23 Annotated Code of Maryland  
24 (2020 Replacement Volume and 2022 Supplement)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
26 That the Laws of Maryland read as follows:

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



**Article – Courts and Judicial Proceedings**

10–402.

(a) Except as otherwise specifically provided in this subtitle it is unlawful for any person to:

(1) Willfully intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication;

(2) Willfully disclose, or endeavor to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subtitle; or

(3) Willfully use, or endeavor to use, the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subtitle.

(b) Any person who violates subsection (a) of this section is guilty of a felony and is subject to imprisonment for not more than 5 years or a fine of not more than \$10,000, or both.

**(c) (12) IT IS LAWFUL UNDER THIS SUBTITLE FOR A PERSON TO INTERCEPT A WIRE, ORAL, OR ELECTRONIC COMMUNICATION WHEN THE PERSON REASONABLY BELIEVES THAT THE PERSON IS IN IMMINENT DANGER OF BECOMING THE VICTIM OF:**

**(I) A CRIME OF VIOLENCE, AS DEFINED IN § 14–101 OF THE CRIMINAL LAW ARTICLE;**

**(II) STALKING UNDER § 3–802 OF THE CRIMINAL LAW ARTICLE;**

**(III) ABUSE, AS DEFINED IN § 4–501 OF THE FAMILY LAW ARTICLE; OR**

**(IV) A VIOLATION OF A PROTECTIVE ORDER UNDER § 4–509 OF THE FAMILY LAW ARTICLE.**

10–405.

(a) Except as provided in [subsection] SUBSECTIONS (b) AND (C) of this section, whenever any wire, oral, or electronic communication has been intercepted, no part of the contents of the communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury,

1 department, officer, agency, regulatory body, legislative committee, or other authority of  
2 this State, or a political subdivision [thereof] **OF THE STATE** if the disclosure of that  
3 information would be in violation of this subtitle.

4 (b) If any wire, oral, or electronic communication is intercepted in any state or  
5 any political subdivision of a state, the United States or any territory, protectorate, or  
6 possession of the United States, including the District of Columbia in accordance with the  
7 law of that jurisdiction, but that would be in violation of this subtitle if the interception was  
8 made in this State, the contents of the communication and evidence derived from the  
9 communication may be received in evidence in any trial, hearing, or other proceeding in or  
10 before any court, grand jury, department, officer, agency, regulatory body, legislative  
11 committee, or other authority of this State, or any political subdivision of this State if:

12 (1) At least one of the parties to the communication was outside the State  
13 during the communication;

14 (2) The interception was not made as part of or in furtherance of an  
15 investigation conducted by or on behalf of law enforcement officials of this State; and

16 (3) All parties to the communication were co-conspirators in a crime of  
17 violence as defined in § 14-101 of the Criminal Law Article.

18 **(C) (1) ANY WIRE, ORAL, OR ELECTRONIC COMMUNICATION THAT HAS  
19 BEEN INTERCEPTED AS AUTHORIZED UNDER § 10-402(C)(12) OF THIS SUBTITLE  
20 MAY BE RECEIVED IN EVIDENCE IN ANY TRIAL, HEARING, OR OTHER PROCEEDING IN  
21 OR BEFORE ANY COURT, GRAND JURY, DEPARTMENT, OFFICER, AGENCY,  
22 REGULATORY BODY, LEGISLATIVE COMMITTEE, OR OTHER AUTHORITY OF THE  
23 STATE, OR A POLITICAL SUBDIVISION OF THE STATE, IF:**

24 **(I) THE COMMUNICATION IS OFFERED AS EVIDENCE OF A  
25 MATERIAL FACT;**

26 **(II) THE PROBATIVE VALUE OF THE COMMUNICATION IS  
27 GREATER THAN OTHER EVIDENCE THAT THE PROPONENT IS ABLE TO PROCURE  
28 THROUGH REASONABLE EFFORTS; AND**

29 **(III) ADMISSION OF COMMUNICATION THAT HAS BEEN  
30 INTERCEPTED INTO EVIDENCE IS IN THE INTEREST OF JUSTICE.**

31 **(2) (I) A WIRE, ORAL, OR ELECTRONIC COMMUNICATION THAT HAS  
32 BEEN INTERCEPTED MAY NOT BE ADMITTED INTO EVIDENCE UNDER THIS  
33 SUBSECTION UNLESS THE PROPONENT NOTIFIES THE ADVERSE PARTY OF THE  
34 PROPONENT'S INTENTION TO OFFER THE COMMUNICATION AS EVIDENCE  
35 SUFFICIENTLY IN ADVANCE OF THE TRIAL, HEARING, OR OTHER PROCEEDING TO  
36 PROVIDE THE ADVERSE PARTY WITH A FAIR OPPORTUNITY TO EXAMINE THE**

1 EVIDENCE AND QUESTION WITNESSES.

2 (II) NOTICE UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH  
3 SHALL INCLUDE A PARTICULAR DESCRIPTION OF THE WIRE, ORAL, OR ELECTRONIC  
4 COMMUNICATION, INCLUDING THE NAME AND ADDRESS OF ANY PERSON INCLUDED  
5 IN THE COMMUNICATION.

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
7 October 1, 2023.